HONOURABLE SHRI JUSTICE R.SUBHASH REDDY

Writ Petition Nos. 3928 of 2006 & 23735 of 2005 and Contempt Case No. 494 of 2006.

Dated August, 2006

COMMON ORDER:

As these three cases are inter-connected, they are heard together and are being disposed of by this common order.

The petitioners in Writ Petition No. 3928 of 2006 are two Junior Colleges established by Sri Gopalaswamy Educational Society. Petitioner-colleges were established in the years 1982 and 1980, respectively, and, they have been conducting intermediate educational courses since then. While so, orders dated 7.5.2005 were passed by the first respondent – Commissioner of Intermediate Education, Andhra Pradesh, in Memo No.4295/B1/2004 ordering closure of the petitioner-colleges on the ground that there is no economically viable strength in the groups/sections, for which, aid was granted by the Government. The said order of closure came to be questioned before this Court in a batch of writ petitions and a Division Bench of this Court by order dated 12.9.2005 allowed the writ petitions by setting aside the orders of closure on the ground that the impugned orders were passed without giving an opportunity of being heard to the petitioner-colleges. However, in the said order, two weeks' time was granted to the managements to file their reply to the notice and the authority concerned was directed to take decision after hearing the management and other interested parties and pass appropriate orders in accordance with law, and, in the meantime, if the teachers have left the institutions and joined the Government institutions, they shall continue to be there till appropriate final orders are passed.

Pursuant to the above directions issued by a Division Bench of this court in the batch of writ petitions, the orders impugned herein were passed by the Commissioner of Intermediate Education, Andhra Pradesh confirming the earlier orders of closure only on the ground that no reply has been filed in compliance of the directions issued in Writ Petition No. 14443 of 2005 and batch.

In this case, it is submitted by Shri Vedula Venkataramana, learned counsel for the petitioner-colleges that this court permitted the petitioner-colleges to file reply within a period of two weeks and the respondents were directed to pass orders after hearing the petitioner-managements, and, though the petitioner-colleges submitted a detailed reply on 22.10.2005, which was received by the respondents, the respondents have passed the orders without considering the said reply and without recording any reasons for passing the orders of closure.

Respondents have filed counter-affidavit, wherein, it is stated that there is no economically viable strength, and, in that view of the matter, orders have been passed for closure of sections/courses. Further, it is stated that instructions were issued in D.H.E's proceedings in Rc.No.3253/DC3-2/88, dated 5.7.1988 revising the minimum academic strength. Inasmuch as there is no such minimum academic strength in the sections/courses run by the petitioner-colleges, orders were passed. Though a detailed counter-affidavit has been filed stating that registers were not being maintained property and even if they are maintained, there are no correct particulars, but, however, the same are not the reasons stated in the order impugned in the writ petition. The only reason stated is that the petitioner-managements have not filed explanation as directed by a Division Bench of this court in order dated

12.9.2005, and, therefore, the impugned orders are passed, and, it is not open for the petitioner-colleges to question the same.

On behalf of the petitioner-colleges, reply affidavit has been filed reiterating their stand that explanation dated 22.10.2005 was sent by registered post with acknowledgement due and the same was received by the respondents on 24.10.2005, and, to that effect, a certificate from the Postal Department in proof of delivery of the same in the Office of the first respondent, is also filed.

Writ Petition No.23735 of 2005 has been filed by the employees of the petitioner-colleges in Writ Petition No.3928 of 2006 questioning the action of the respondents 1 to 3 in not taking action on the representations made by the petitioners and the action of the respondents 4 and 5 i.e. petitioners in W.P.No.3928 of 2006, in withholding the petitioners' original Educational Certificates, Service Registers, T.P.F. Bonds and Pass Books, G.S.L.I. amounts, Postal Recurring Deposits as illegal and arbitrary.

It is the case of the petitioners that having regard to the closure orders passed by the 2nd respondent, they were redeployed to several needy Government Junior Colleges in the State and they are working there. But, however, their salaries are not being paid as the relevant records were withheld by the respondents 4 and 5. This court, at the stage of admission, issued interim orders directing the respondent Nos. 4 and 5 to return the petitioners' original educational certificates, service registers, TPF Bonds and Pass Books, G.S.L.I amounts, Postal Recurring Deposits etc. Complaining that in spite of such directions, respondents have not returned the original educational certificates, service registers, T.P.F.Bonds and Pass Books, G.S.L.I. amounts, Postal Recurring Deposits etc. and disobeyed the orders of this court, Contempt Case

No. 494 of 2006 has been filed by the petitioners in Writ Petition No.23735 of 2005.

It is not in dispute that the petitioner-colleges in W.P.No.3928 of 2006 were established in the years 1982 and 80, respectively, and, some of the posts were admitted to grant-in-aid in the year 1990. It is the case of the petitioners that while evaluating as to whether minimum economic strength is there or not in various sections/courses, the respondents have not considered the various aspects as per the guidelines issued in this regard. On the other hand, it is the case of the respondents that there is no minimum economic strength to run the courses, and, in that view of the matter, to save the exchequer of the Government, orders of closure were passed. When orders of closure were passed earlier without giving prior opportunity, the petitioner-colleges filed Writ Petition No.14443 of 2005 and batch, wherein the orders of closure were set aside by a Division Bench of this Court and the petitioner-colleges were permitted to submit their explanation within a period of two weeks and the respondents were directed to take decision after hearing the managements of the colleges. While it is the case of the petitioner-colleges that they sent their explanation by registered post with acknowledgement due on 22.10.2005, and the same was received by the Office of the respondents on 24.10.2005, the receipt of the same was denied by the respondents. But, however, the petitioner-colleges have filed reply-affidavit reiterating their stand and even a certificate from the postal authorities to the effect of service of the same on the respondents on 24.10.2005, is filed along with the reply affidavit. In view of the said certificate issued by the Postal Department, there is no reason to disbelieve the version of the petitioner-colleges that they have sent their reply to the respondents. Though the petitioner-colleges have not given any

explanation for not submitting the reply within the time granted by this court, but, at the same time, it is to be noticed that the present impugned order is passed only on 14.2.2006, nearly after three months after the representation is alleged to have been given by the petitioner-colleges. Even in the present impugned order, no reasons have been recorded, and, merely on the ground that petitioner-colleges have not filed their explanation as per the orders of a Division Bench of this Court, impugned order is passed by recording a finding that the earlier order passed in this regard holds good. In any event, even if the explanation is not readily available with them, the respondents ought to have considered the matter independently and recorded reasons for passing an order of closure of sections/courses, which are being run by the petitioner-colleges. Though a detailed counter affidavit is filed stating that there is no economic strength in the sections/courses which are ordered to be closed and the same are being run contrary to the instructions issued by the Department and that the petitioner-colleges have not maintained the records correctly, or, even if maintained, there is no correct information, but, however, the said reasons are not recorded in the impugned order. In that view of the matter, I deem it appropriate that the matter should be considered afresh with reference to explanation filed by petitioner-colleges on 22.10.2005, which is stated to have been delivered by the postal authorities on 24.10.2005. Accordingly, the order impugned in Writ petition No. 3928 of 2006 is set aside and the respondents are directed to consider the matter afresh after considering the explanation filed by the petitioner-colleges, and if the explanation dated: 22.10.2005 is not readily available with the respondents, the respondents shall take the copy of the explanation enclosed along with the writ petition and served upon them as the explanation. However, it is made clear that the lecturers/teachers, whoever have been

redeployed and posted in other or government colleges, shall continue to be there till the appropriate final orders are passed in the matter. Writ Petition No. 3928 of 2006 is disposed of accordingly.

As far as the prayer of the petitioners in Writ Petition No. 23735 of 2005, who are redeployed to various Government colleges consequent to the orders of closure of the petitioner-colleges in W.P.No.3928 of 2006 is concerned, learned counsel for the petitioners in Writ Petition No. 3928 of 2006, Shri Vedula Venkata Ramana, submitted that the petitioner-colleges are ready to hand-over the records available with them to the respondents or any of the representatives deputed by the respondents. A memo has also been filed by the petitioner-colleges, which is to the following effect:

> "It is submitted that during the course of the hearing of the above Writ Petition on 28.7.2006, this Honourable Court has observed that the management of the petitioner Junior Colleges shall return the original educational qualification certificates to the Lecturers/teachers in the petitioner-colleges since such original educational certificates are presently in the custody of the Management of the petitioner-colleges.
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> The petitioners hereby undertake that they will return the original educational certificates to the lecturers/teachers, without any reservation and such original certificates will be returned to the concerned lecturers as and when they approach the management of the petitioner-colleges. It is further undertaken that the managements of the petitioner-colleges will not withhold such original educational certificates when any request for return of the same is made by the concerned lecturers/teachers. The present memo is being filed as per the oral observations of the Honourable Court on 28.7.2006."

In view of the memo filed by the petitioner-colleges coupled with the undertaking given by the learned counsel for the petitioner-colleges in W.P.No. 3928 of 2006 that all the records available with the petitioner-colleges in respect of the lecturers/staff who were redeployed and working in other institutes or government colleges, shall be handed-over to a representative of Regional Joint Director of Intermediate Education, Kadapa. The Regional Joint Director,

Intermediate Education, Kadapa shall depute a responsible officer with a requisition to the petitioner-colleges to furnish all the relevant documents/records of the petitioners in Writ Petition No. 23735 of 2005 and the petitioner-colleges shall hand-over the entire records, documents, certificates etc. to such officer within two weeks from the date of the receipt of requisition from the Regional Joint Director, Kadapa. Writ Petition No. 23735 of 2005 is accordingly disposed of.

In view of the orders passed in Writ Petition Nos. 3928 of 2006 and 23735 of 2005, the contempt case is closed.

In the result, both the writ petitions are disposed of and the contempt case is closed. No costs.

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